

ARKANSAS SUPREME COURT

No. CR 07-1206

BOBBY JOE OLLES
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered January 31, 2008

PRO SE MOTION FOR BELATED
APPEAL [CIRCUIT COURT OF WHITE
COUNTY, CR 2006-204]

MOTION DENIED.

PER CURIAM

In 2006, petitioner Bobby Joe Olles entered a plea of guilty to five counts of theft by receiving. He was sentenced to 120 months' imprisonment on each of four counts to be served concurrently. On the fifth count, he was sentenced to sixty months' imprisonment to be served consecutively to the other counts. Subsequently, he timely filed in the trial court a verified pro se petition for relief pursuant to Ark. R. Crim. P. 37.1.¹ The trial court denied the petition in an order entered on March 20, 2007. Petitioner filed a notice of appeal on May 2, 2007, forty-three days later. A notice must be filed within thirty days of the final order pursuant to Ark. R. App. P.–Civ. 4(a).

As the notice of appeal was untimely filed, petitioner has filed in this court a pro se motion for belated appeal pursuant to Ark. R. App. P.–Crim. 2(e). A petitioner has the right to appeal a

¹Arkansas Rules of Criminal Procedure Rule 37.2(c) provides that a petition under the rule must be filed within ninety days of the date the judgment was entered if the petitioner pleaded guilty. At the Rule 37.1 hearing, the trial court set out the basis for finding that petitioner's Rule 37.1 petition was timely filed. The judgment was entered on October 4, 2006, and the ninetieth day after entry of the judgment was Monday, January 2, 2007. That day was declared by the federal government to be a day honoring the late President Ford, and the post offices were closed. Therefore, petitioner's Rule 37.1 petition, filed on January 3, 2007, was timely filed.

ruling on a petition for postconviction relief. *See Scott v. State*, 281 Ark. 436, 664 S.W.2d 475 (1984) (per curiam). However, along with that right goes the responsibility to timely file a notice of appeal within thirty days of the date the order was entered. If a petitioner fails to timely file a notice of appeal, a belated appeal will not be allowed absent a showing by the petitioner of good cause for the failure to comply with proper procedure. *Garner v. State*, 293 Ark. 309, 737 S.W.2d 637 (1987) (per curiam). The burden lies with the petitioner to make a showing of good cause for the failure to comply with proper procedure. *Id.* The fact that a petitioner is proceeding pro se does not constitute good cause for the failure to conform to the prevailing rules of procedure. *Walker v. State*, 283 Ark. 339, 676 S.W.2d 460 (1984) (per curiam); *see also Sullivan v. State*, 301 Ark. 352, 784 S.W.2d 155 (1990) (per curiam).

Petitioner claims that, through no fault of his own, a series of mishaps lead to the late filing. Initially, petitioner's copy of the order of denial was returned to the trial court by the prison although it was properly addressed. The court then re-mailed the order to petitioner. After receipt of the order, petitioner used the incorrect address for the White County Circuit Clerk's office to mail the notice of appeal. The incorrect address for the circuit clerk's office caused the notice of appeal to be delivered to the District Clerk's post office box, which was checked infrequently. After remaining in the box for approximately ten days, the district court gave the notice of appeal to the Sheriff's Office. Deputies then delivered the notice to the circuit clerk. The notice of appeal was filed on May 2, 2007, which was forty-three days after entry of the final order. In support of this recitation of the chain of events, petitioner attached to the motion a memorandum written to the file by the trial court that set out the various events that transpired prior to petitioner's notice of appeal being untimely filed.

Appellant has shown no good cause for his failure to comply with proper procedure. When proceeding pro se, this court has specifically held that it is not the responsibility of the circuit clerk, circuit court, or anyone other than the *petitioner* to perfect an appeal. *Sullivan, supra*. The final order was erroneously returned to the trial court by the prison which delayed the order's delivery to petitioner, but it was promptly re-mailed and received by him within the time for filing a notice of appeal. Petitioner blames his use of the incorrect address for the circuit clerk on his having attended the Rule 37.1 hearing at the new courthouse, rather than at the old courthouse, but he admits that he used the wrong address for the circuit clerk's office when filing the notice of appeal. Petitioner was solely responsible for timely filing his notice of appeal with the clerk and failed to do so.

Motion denied.